

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission,)	
On Its Own Motion)	
)	Docket No. 02-0169
vs.)	
)	
Illinois Power Company.)	
)	
Reconciliation of revenues collected		
under Coal Tar Riders with prudent		
costs associated with coal tar clean)	
up expenditures.)	
)	

ILLINOIS POWER COMPANY’S APPLICATION FOR REHEARING

Pursuant to § 200.880 of the Commission’s Rules of Practice and 220 ILCS 5/10-113, Illinois Power Company (“Illinois Power,” “Company” or “IP”) hereby requests rehearing of the Illinois Commerce Commission’s May 21, 2003, Order (“Order”) in the above-captioned matter. In support of this Application, Illinois Power states as follows:

I. INTRODUCTION AND SUMMARY

On May 21, 2003, the Illinois Commerce Commission entered its Order directing Illinois Power to reimburse the insurance trust for disallowed costs of \$149,000. The Commission disallowed two specific items that Illinois Power sought recovery under its Coal Tar Riders. First, the Commission disallowed the costs of \$49,000 for dues associated with IP’s membership with the Electric Power Research Institute. Second, the Commission disallowed the cost of \$100,000 for an EPRI study on the background level of polynuclear aromatic hydrocarbons (hereinafter “PAH Study”). It is the latter

disallowance on which Illinois Power seeks rehearing. More specifically, the Commission's Order fails to consider the entire record of evidence presented in this matter and holds Illinois Power to an improper standard of prudence in its decision to disallow recovery of the PAH Study.

II. THE PAH STUDY COSTS ARE RECOVERABLE UNDER ILLINOIS POWER'S COAL TAR RIDERS

In its Order, the Commission specifically notes that the issue regarding the recovery of the PAH Study cost "is a close question, and the positions of IP and Staff are well explained in their testimony and briefs." Order at 10. Unfortunately, it appears that the Commission merely hinged on the fact that "the purpose of the study is to convince the IEPA to change its regulations, not to study remediation activities currently taking place at IP's MGP sites." Order at 11.

The main purpose is to establish the levels of PAH permitted to remain in the soil at specific MGP sites before and after clean-up activities. IP Exhibit 2.7, lines 131-146; *see also* IP Revised Exhibit 2.10, lines 36-40. IP does not dispute that the PAH Study is being used to influence the Illinois EPA to modify the Tiered Approach to Corrective Action Objectives (hereinafter "TACO"). The TACO regulations establish the acceptable levels of PAH concentrations that may remain in the soil at MGP sites. IP Exhibit 2.7, lines 72-74. The TACO regulations permit that "area background concentrations may be used as remediation objectives for contaminants of concern at a site." See 35 Ill. Adm. Code § 742.400. The amount of PAH concentrations that can remain in the soil may be determined either by (1) a Statewide Area Background Approach, or (2) "a statistically valid approach for determining area background

concentrations appropriate for the characteristics of the data set, and approved by the [Illinois EPA] (“site-specific”).” See 35 Ill. Adm. Code § 742.405. The PAH Study would provide additional information to determine the minimum acceptable PAH concentration that should be allowed to remain in the soil upon completion of a MGP clean-up project. The Commission’s Order seems to suggest that Illinois Power’s participation in the PAH Study is merely a tool to “lobby” the IEPA. To the contrary, Illinois Power sought to validate or properly adjust the appropriate level of PAH concentrations allowed to remain at its MGP sites consistent with the TACO requirements. IP Exhibit 2.7, lines 71-95. The Company believed that this particular activity would offer improved efficiencies and cost savings. IP Revised Exhibit 2.10, lines 26-40.

The Commission’s Order erroneously concluded that the PAH Study was “not to study remediation activities currently.” Order at 11. Nothing in the record supports such a conclusion. Rather, there is no doubt that Illinois Power engaged in the PAH Study in an attempt to lower its clean-up costs for its MGP sites, costs that may ultimately be borne by the customer. IP Exhibit 2.7, lines 147-150; *see also* IP Exhibit 2.7, lines 109-115. Accordingly, there is no doubt that the PAH Study is an incremental cost, in that, if it were not for IP’s MGP sites, there would have been no reason for IP to fund this particular study. IP Exhibit 2.7, lines 154-169. There is absolutely no evidence in the record to suggest otherwise. The fact that the study is multi-utility and multi-location does not take the PAH Study outside the scope of the Riders. Illinois Power’s approach with respect to the PAH Study is consistent with the Commission’s goals of minimizing the MGP clean-up costs to the ratepayers, consistent with safety, reliability and quality

assurance. Utilities should be encouraged by the Commission to participate in projects such as the PAH Study. Such projects can produce large savings to the customer on a cost-effective basis. IP Exhibit 2.7, lines 109-115; see also Exhibit 2.7, lines 124-130. Such activity is clearly within the scope of Illinois Power's Coal Tar riders.

Furthermore, nothing in the record supports the Commission's conclusion that the "PAH study . . . does not fall within the realm of the environmental activities to be recovered through the IP's coal tar riders." Order at Under Rider EEA and GEA,

Incremental Costs:

[R]efer to all payments by Utility to outside vendors in connection with Environmental Activities associated with the investigation and cleanup of former Manufactured Gas Plants. Such costs also include but are not limited to consultant and legal fees, land acquisition costs, litigation expenses, costs or expenses associated with judgments, orders or decisions (including settlements) by a court, a governmental agency or department, or other adjudicatory or quasi-adjudicatory body related to Manufactured Gas Operations/Sites.

IP's Rider EEA, Ill. C. C. No. 31, Second Revised Sheet No. 65.1; GEA, Ill. C. C. No. 32 Second Revised Sheet No. 40. *See also*, ICC Staff Exhibit 1.00, lines 54-63.

Environmental Activities under the Riders:

[R]efer to the investigation, sampling, monitoring, testing, removal, disposal, storage, remediation or other treatment of residues associated with Manufactured Gas Operations, or with other operations that generated substances subject to federal, state or local environmental laws conducted at locations where Manufactured Gas Plants operated, or dismantling of facilities utilized in Manufactured Gas Operations.

IP's EEA, Ill. C. C. No. 31, Second Revised Sheet No. 65.1; GEA, Ill. C. C. No. 32 Second Revised Sheet No. 40.

It is clear that Illinois Power's participation in the PAH Study was directly related to its specific MGP sites and recoverable under the Coal Tar Riders.

Furthermore, the Commission's Order notes that "[r]esults and possible future benefits, if any, of the PAH study are not yet known." However, the record is clear that the Commission's Staff specifically noted that its proposed disallowance was not related to the prudence of the cost. ICC Staff Exhibit 2.00, lines 66-72; *see also* Staff's Initial Brief, p. 5. Moreover, prudent costs are recoverable even if the actual benefits are not received until long into the future. In fact, the Commission's prudence standard does not even require an immediate cost savings. The four standards adopted by the Commission in its Order on Rehearing in Docket No. 90-0127, and affirmed in its Order in Docket Nos. 91-0080 through 91-0095, Consolidated are:

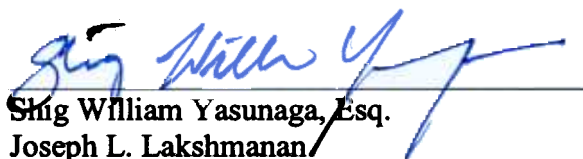
- (1) reasonable and appropriate business standards;
- (2) the requirements of other relevant state and/or federal authorities;
- (3) minimization of costs to ratepayers, consistent with safety, reliability and quality assurance; and
- (4) facts and knowledge the Company knew or reasonably should have known at the time the expenditures were made.

The Commission's order clearly imposes a new standard on the Utilities, in that, it appears in order to be prudent a cost must have an immediate benefit. As fully demonstrated from the record, the PAH Study cost was reasonable (ICC Staff Exhibit 2.00, lines 66-72), consistent with the TACO regulations and IP's clean-up requirements (IP Exhibit 2.7, lines 131-146), done with the goal of minimizing the MGP clean-up costs to the customers (IP Exhibit 2.7, lines 109-115), and within sound business practices. This cost is clearly recoverable.

III. CONCLUSION

In conclusion, Illinois Power respectfully requests that the Commission grant this Application. Based on information submitted herein, Illinois Power respectfully requests the Commission find on rehearing that the cost related to the PAH Study be recoverable under the Company's Coal Tar Riders.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Shig William Y.", is written over a horizontal line.

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Notice of Filing

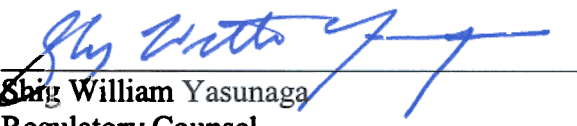
To: Attached Service List

Please take notice that on June 17, 2003, I filed with the Chief Clerk of the Illinois Commerce Commission via E-Docket, the Application for Rehearing of Illinois Power Company in the above-captioned matter, copies of which are hereby served upon you.


Shig William Yasunaga
Regulatory Counsel
Illinois Power Company

Certificate of Service

I hereby certify that copies of the foregoing Notice of Filing, together with the Application for Rehearing of Illinois Power Company, were served upon those listed in the attached service list via electronic mail on June 17, 2003.


Shig William Yasunaga
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